IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 28TH AUGUST 2006 / 6TH BHADRA 1928

ST.Rev..No. 504 of 2004()

TA.794/2000 of S.T.A.T.ADDL.BENCH,ERNAKULAM DT.19.12.2002
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REVISION PETITIONER/RESPONDENT/REVENUE:

STATE OF KERALA,
REP. BY DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.GEORGEKUTTY MATHEW

RESPONDENTS: APPELLANT/ASSESSEE:

M/S. NICE GARMENTS, KALOOR, KOCHI.

BY ADV. SRI.V.P.SUKUMAR

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 28/08/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.R.V. No.504 of 2004

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Dated this the 28th day of August, 2006.

JUDGMENT

Ramachandran Nair, J.

In the revision case filed by the State the question is whether petitioner who is a dealer in readymade garments is entitled to exemption from sales tax on the turnover upto Rs.10 lakhs in terms of S.R.O. 1727/1993. The assessment pertains to the year 1994-95. The first appellate authority held that notification SRO 1727/1993 provides for exemption for small dealers with turnover upto Rs.10 lakhs and since respondent's turnover is above Rs.50 lakhs for the year 1994-95 , the respondent is not entitled to exemption. The Tribunal on the other hand referred to the amendment introduced by SRO 658/1994 with effect from 17.5.1994 and held that respondent is entitled to exemption upto first Rs.10 lakh's turnover. It is against this order of the Tribunal the revision is filed by the State.

2. We have heard Government Pleader appearing for the petitioner and counsel appearing for the respondent. On going through Entry 4 of Fifth Schedule and SRO 1724/1993 with the amendment introduced by SRO 658/1994 we find that benefit of exemption is available to manufacturers of readymade garments including hosiery products if the turnover is below Rs.10 lakhs. However, exemption upto Rs.10 lakhs is provided once in an year when the dealer crosses Rs.10 lakhs turnover. This provision obviously is to avoid difficulty for dealers

who are making sales based on exemption without collection of tax but later crossed the turnover of Rs.10 lakhs in the year. Therefore, a manufacturer of readymade garments including hosiery can claim exemption once in an year when his turnover crosses Rs.10 lakhs. For all other years exemption is available only if turnover is below Rs.10 lakhs in an year. In other words, exemption is not available under the notification to a manufacturer of readymade garments every year. We, therefore, hold that the order issued by the Tribunal is not correct. However, counsel for the respondent submitted that the details of turnover of the year in which the respondent-assessee crossed Rs.10 lakhs turnover is not mentioned by the first appellate authority while rejecting benefit of notification. This is a matter for verification by the Assessing Officer. If respondent-assessee has not crossed Rs.10 lakhs turnover in any previous year and exemption was not granted upto Rs.10 lakhs based on above notification in any earlier year, then the officer is bound to grant exemption for 1994-95 treating this as the first year. The revision case is allowed but subject to the direction to the officer for verification and grant of relief if eligible as above. Revised proceedings will be issued by the officer in terms of the judgment after hearing the petitioner.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

T.R.C. No. of 200

JUDGMENT

Dated